

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-07-SE-023
Syntax-Brilliant Corporation)	NAL/Acct. No. 200732100036
)	FRN # 0016507311
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 30, 2007

Released: May 30, 2007

By the Commission: Commissioner Adelstein issuing a statement.

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Syntax-Brilliant Corporation (“Syntax-Brilliant”) apparently liable in the amount of \$2,899,575 for its willful and repeated violations of Section 15.117(i)(1)(i) and (ii) of the Commission’s Rules (“Rules”).¹ The apparent violations involve Syntax-Brilliant’s importation and interstate shipment of television receivers that do not comply with the Commission’s rules regarding digital television (“DTV”) reception capability.

II. BACKGROUND

2. The Commission adopted the DTV reception capability requirement in 2002.² The DTV reception requirement, which also is often termed the “DTV tuner requirement,”³ requires that all new television broadcast receivers that are imported into the United States or shipped in interstate commerce be capable of receiving the signals of DTV broadcast stations over-the-air.⁴ The DTV tuner requirement was intended to facilitate the transition to digital television by promoting the availability of DTV reception equipment and to protect consumers by ensuring that their television receivers will provide off-the-air television reception of digital signals just as they have provided off-the-air television reception of analog signals.⁵

¹ 47 C.F.R. § 15.117(i)(1)(i) and (ii).

² *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978, 15996 (2002) (“*DTV Review Second Report and Order*”).

³ DTV reception capability involves more circuitry than just a tuner. To provide this capability requires a tuner to receive the digital signal, an MPEG decoder/formatter, and associated processing capability and memory. See *Requirements for Digital Television Receiving Capability*, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11196 n. 2 (2005) (“*DTV Tuner Report and Order*”).

⁴ *DTV Review Second Report and Order*, 17 FCC Rcd at 15996. The DTV tuner requirement also applies to other devices such as television interface devices that do not include a viewing screen, e.g., devices such as VCRs and DVD players that are intended to provide audio-video signals to a video monitor with an antenna or antenna terminals that can be used for off-the-air television reception. See 47 C.F.R. § 15.117(i)(1)(i).

⁵ *Id.* at 15979. In this latter regard, the DTV tuner requirement ensures that the intent of the All Channel Receiver Act of 1962 (“ACRA”), P.L. No. 87-529, 76 Stat. 150, is fulfilled. The ACRA, which is codified at 47 U.S.C. § (continued....)

3. In order to minimize the impact of the DTV tuner requirement on both manufacturers and consumers, the Commission adopted a phase-in schedule that applied the requirement first to receivers with the largest screens and then to progressively smaller screen receivers and other television receiving devices that do not include a viewing screen, *i.e.*, VCRs and DVD players.⁶ This phase-in plan was intended to allow increasing economies of scale with production volume to be realized so that DTV tuner costs would be lower when they are required to be included in smaller sets and other television receiving devices.⁷ As modified by the Commission in 2005,⁸ this phase-in schedule is as follows:

Receivers with screen sizes 36" and above -- 50% of units imported or shipped interstate by responsible parties⁹ were required to include DTV tuners effective July 1, 2004; 100% of such units were required to include DTV tuners effective July 1, 2005;

Receivers with screen sizes 25" to 35" -- 50% of units imported or shipped interstate by responsible parties were required to include DTV tuners effective July 1, 2005; 100% of such units were required to include DTV tuners effective March 1, 2006;

Receivers with screen sizes less than 25" - 100% of units imported or shipped interstate by responsible parties were required to include DTV tuners effective March 1, 2007; and

Other video devices (videocassette recorders (VCRs), digital video recorders such as hard drive and DVD recorders, etc.) that receive television signals - 100% of units imported or shipped interstate by responsible parties were required to include DTV tuners effective March 1, 2007.

4. In January 2007, the Enforcement Bureau's review of Customs importation data¹⁰ indicated that Syntax-Brilliant apparently was importing television receivers with screen sizes 25" to 35"

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303(s), states that the Commission shall "[h]ave authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting" See *DTV Review Second Report and Order*, 17 FCC Rcd at 15589-91.

⁶ *Id.* at 15998-99.

⁷ *Id.*

⁸ In June 2005, the Commission modified the rules to advance the date on which 100% of new television receivers with screen sizes 25-36" that are imported or shipped interstate must include DTV tuners from July 1, 2006 to March 1, 2006. *DTV Tuner Report and Order*, 20 FCC Rcd at 11203. Subsequently, in November 2005, the Commission modified the rules to advance the date on which 100% of new television receivers with screen sizes 13-24" and certain other television receiving devices such as VCRs and digital video recorders that are imported or shipped interstate must include DTV tuners from July 1, 2007 to March 1, 2007. See *Requirements for Digital Television Receiving Capability*, Second Report and Order, 20 FCC Rcd 18607, 18614-16 (2005) ("*DTV Tuner Second Report and Order*"). The Commission also amended the rules to apply the DTV tuner requirement to new receivers with screen sizes smaller than 13" on this same schedule. *Id.*

⁹ The DTV tuner requirement applies to "responsible parties," as defined in Section 2.909 of the Rules, 47 C.F.R. § 2.909. Under Section 2.909, the party responsible for equipment such as television receivers that are subject to our "verification" equipment authorization procedure is the manufacturer or, in the case of imported equipment, the importer. If subsequent to manufacture and importation, the equipment is modified by any party not working under the authority of the responsible party, the party performing the modification becomes the new responsible party.

¹⁰ No radio frequency device may be imported into the Customs territory of the United States unless the importer or ultimate consignee declares that the device meets one of the conditions for entry specified in Section 2.1204 of the (continued....)

("mid-size receivers") that did not include DTV tuners after the applicable March 1, 2006 deadline. The Enforcement Bureau issued a letter of inquiry ("LOI") to Syntax-Brilliant on March 8, 2007.¹¹ On March 19, 2007, Syntax-Brilliant filed a response to the LOI.¹²

5. In its LOI Response, Syntax-Brilliant admits that it imported and shipped interstate the following seven models of mid-size screen television receivers that do not include DTV tuners after March 1, 2006: Model LT26HVE, Model LT26HVX, Model LT27HVX, Model LT30HV, Model LT32HV, Model LT32HVE, and Model LT32HVM.¹³ Specifically, Syntax-Brilliant admits that on 88 dates between March 3, 2006 and October 31, 2006, it imported a total of 28,430 units of non-DTV-compliant mid-size screen television receivers.¹⁴ Syntax-Brilliant further admits that, between March 1, 2006 and October 31, 2006, it made 1,765 interstate shipments comprising a total of 43,892 non-DTV-compliant mid-size screen televisions.¹⁵ In addition, Syntax-Brilliant acknowledges that it shipped interstate one model of a large-size screen television receiver that does not include a DTV tuner after July 1, 2005: Model LT37HVE.¹⁶ Syntax-Brilliant indicates that, between December 9, 2005 and October 16, 2006, it made eight interstate shipments comprising a total of 165 non-DTV compliant large-size screen television receivers.¹⁷ Thus, in all, Syntax-Brilliant made a total of 1,861 importations or interstate shipments comprising 72,487 non-DTV-compliant mid-size and large-size screen television receivers after the applicable deadlines.

6. In its LOI Response, Syntax-Brilliant asserts that it was adversely affected by the Commission's decision to advance the compliance deadline for mid-size screen television receivers from July 1, 2006 to March 1, 2006.¹⁸ Syntax-Brilliant states that it was formed in November of 2005 -- just months before the advanced March 1, 2006 deadline -- through the merger of the Syntax Groups Corporation and the Brilliant Corporation.¹⁹ Syntax-Brilliant maintains that it is a small business with fewer than 300 employees and that the Commission's decision to accelerate the compliance deadline for mid-size screen television receivers imposed an unreasonable economic burden on it by requiring it to redesign product lines within three months of the company's formation.²⁰ Syntax-Brilliant states that it

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Rules, 47 C.F.R. § 2.1204. See 47 C.F.R. § 2.1203. Such import declarations are filed with the U.S. Customs and Border Patrol on FCC Form 740, or electronically where electronic filing is available. 47 C.F.R. § 2.1205. The Enforcement Bureau, in turn, receives this importation data from Customs and uses it to monitor compliance with the DTV tuner requirements and other requirements applicable to radio frequency devices.

¹¹ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Vincent F. Sollitto, Jr., Chairman and CEO, Syntax-Brilliant U.S.A., Inc. (March 8, 2007).

¹² See Letter from Andrew M. Beato, Esq. Counsel for Syntax-Brilliant U.S.A., Inc. to Kathryn Berthot, Spectrum Enforcement Division, Enforcement Bureau (March 19, 2007). ("LOI Response").

¹³ *Id.* at Exhibits 1 and 2.

¹⁴ *Id.* at Exhibit 1.

¹⁵ *Id.* at Exhibit 2.

¹⁶ *Id.* at Exhibit 3.

¹⁷ *Id.*

¹⁸ LOI Response at 5; see also *supra* n. 8.

¹⁹ *Id.* at 5, 7.

²⁰ *Id.* at 5. Syntax-Brilliant offers no explanation as to why it shipped non-DTV-compliant large-size screen receivers after the applicable July 1, 2005 deadline.

was unable to accelerate its new model production schedule on short notice and based on an implementation schedule that was inconsistent with the traditional July release of new models.²¹ Finally, Syntax-Brilliant states that most of its non-DTV-compliant receivers were imported and shipped interstate in the first month following the March 1, 2006 deadline, and that these receivers were clearly labeled as being “HD Ready”²² to indicate that an integrated DTV tuner was not included.²³

III. DISCUSSION

A. Failure to Comply with DTV Tuner Requirement

7. We conclude that Syntax-Brilliant apparently willfully²⁴ and repeatedly²⁵ imported and shipped in interstate commerce television receivers that do not comply with the DTV tuner requirement in violation of Section 15.117(i)(1)(i) and (ii) of the Rules. Syntax-Brilliant admits that, after the July 1, 2005 deadline for large-size screen receivers, it made eight interstate shipments of a total of 165 non-DTV-compliant large-size screen receivers. Syntax-Brilliant also admits that, after the March 1, 2006 deadline for mid-size screen receivers, it imported on 88 dates a total of 28,430 non-DTV-compliant mid-size receivers and made 1,765 interstate shipments of a total of 43,892 non-DTV-compliant mid-size screen receivers. In all, Syntax-Brilliant imported and shipped interstate on 1,861 occasions a total of 72,622 non-DTV-compliant television receivers.

B. Proposed Forfeiture

8. Based on the analysis set forth below, we conclude that Syntax-Brilliant is apparently liable for a forfeiture in the amount of \$2,899,575 for willfully and repeatedly importing and shipping in interstate commerce television receivers that do not comply with the DTV tuner requirement in violation of Section 15.117(i)(1)(i) and (ii) of the Rules.

9. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁶ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture

²¹ *Id.*

²² “HDTV-ready” or “HD-ready” generally refers to television monitors or receivers that can display HDTV programming if you have a separate HDTV tuner, HD cable set-top box or HD satellite set-top-box receiver.

²³ *Id.* at 4-5.

²⁴ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

²⁵ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

²⁶ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

penalty should be imposed.²⁷ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²⁸ We conclude under this standard that Syntax-Brilliant is apparently liable for forfeiture for its apparent willful and repeated violations of Section 15.117(i)(1)(i) and (ii) of the Rules.

10. Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL.²⁹ Section 503(b)(6) does not, however, bar the Commission from assessing whether Syntax-Brilliant's conduct prior to that time period apparently violated the rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.³⁰ Thus, while we may consider that Syntax-Brilliant's prior conduct violated the rules, the forfeiture amount we propose herein relates to Syntax-Brilliant's apparent violations that have occurred within the past year.³¹ Syntax Brilliant imported 21,255 non-DTV-compliant television receivers and shipped interstate 29,163 non-DTV-compliant television receivers more than one year prior to the date of this NAL. The non-compliant receivers represented by these importations and interstate shipments are beyond the applicable one-year statute of limitations and not subject to forfeiture.³² Accordingly, the forfeiture we propose relates only to the 7,175 non-DTV-compliant television receivers imported, and the 14,894 non-DTV-compliant television receivers shipped interstate, within the statute of limitations.

11. Under Section 503(b)(2)(D) of the Act,³³ we may assess an entity that is neither a common carrier, broadcast licensee or cable operator a forfeiture of up to \$11,000 for each violation or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation. In exercising such authority, we are required to take into account "the nature,

²⁷ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁸ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

²⁹ 47 U.S.C. § 503(b)(6).

³⁰ See 47 U.S.C. § 503(b)(2)(E), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1828 (2006), *response pending*; *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967) *recon. denied*, 11 FCC 2d 193, 195 (1967).

³¹ This NAL also includes a number of violations that occurred more than a year ago, but remain subject to enforcement action pursuant to a tolling agreement. See Tolling Agreement between Syntax-Brilliant Corp. and Enforcement Bureau, Federal Communications Commission, dated April 27, 2007. For purposes of this NAL, references to violations that occurred "within the last year" include violations subject to this tolling agreement.

³² 47 U.S.C. § 503(b)(6)(B).

³³ 47 U.S.C. § 503(b)(2)(D). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$11,000/\$87,500 to \$11,000/\$97,500).

circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”³⁴

12. The Commission’s *Forfeiture Policy Statement*³⁵ and Section 1.80 of the Rules do not establish a specific base forfeiture for violation of the DTV tuner requirement. The Commission has substantial discretion, however, in proposing forfeitures.³⁶ We may apply the base forfeiture amounts described in the *Forfeiture Policy Statement* and our rules, or we may depart from them altogether as the circumstances demand.

13. The DTV tuner requirement promotes an important public policy goal of helping to speed the transition to digital television, and we therefore find violations of this requirement to be more egregious, in general, than many other types of equipment marketing cases that come before us. DTV receivers are a necessary element of digital broadcast television service. Consumers must have the capability to receive DTV signals for the DTV transition to move forward to successful completion.³⁷ The DTV tuner requirement is intended to protect consumers by ensuring that their TV receivers will provide off-the-air TV reception of digital signals when analog TV operation ceases.³⁸ Thus, we find that applying a proposed forfeiture on a per model basis, as we have in other more routine equipment marketing cases, would result in forfeiture amounts that are not commensurate with the seriousness of the violation.³⁹

14. Accordingly, in cases involving the shipping or importation of non-compliant DTV tuners, we will propose a forfeiture based on each unit shipped or imported within the statute of limitations, regardless of the number of models shipped or imported. This approach, in our view, gets to the root of the apparent violation – non-compliant televisions in the hands of American consumers. Moreover, to reflect the increasing seriousness of the violation as the number of non-compliant units

³⁴ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

³⁵ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17115 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

³⁶ See, e.g., *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability, FCC 07-58 at ¶ 24 (rel. May 3, 2007); *Globcom, Inc. d/b/a Globom Global Commun.*, Order of Forfeiture, 21 FCC Rcd 4710, 4723-24 (2006). We may use the base forfeiture amounts described in the *Forfeiture Policy Statement* and our rules, or we may depart from them altogether if the circumstances demand it. See 47 C.F.R. § 1.80(b)(4) (“The Commission and its staff *may* use these guidelines in particular cases [, and] *retain the discretion* to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute.”) (emphasis added). We find that calculating forfeitures for violations of the DTV tuner requirement using a per-unit, tiered approach is reasonable because it results in forfeiture amounts that reflect the egregiousness of the violations, and that will effectively deter future misconduct. Moreover, this forfeiture calculation methodology is consistent and predictable when applied to different factual scenarios.

³⁷ See *DTV Tuner Report and Order*, 20 FCC Rcd at 11199; *DTV Tuner Second Report and Order*, 20 FCC Rcd at 18608.

³⁸ See *id.*.

³⁹ As noted above, Syntax-Brilliant shipped or imported a total of eight large and mid-screen television receivers that did not include DTV tuners after the applicable deadlines. See *supra* ¶ 5. Application of the statutory maximum forfeiture (\$11,000) for each model would result in a proposed forfeiture of \$88,000, an amount that fails to reflect the true scope of Syntax-Brilliant’s apparent violations or the public harm of importing and shipping such large numbers of non-compliant television receivers.

shipped or imported rises, we will propose forfeitures on a tier-by-tier basis, applying an increased per-unit forfeiture separately to each successive tier.

15. We will base these tiers and per-unit penalties on our reasonable judgment of the egregiousness of the number of non-compliant units involved in the unlawful shipment or importation. For example, for the first 1000 non-compliant units shipped or imported by Syntax-Brilliant, we propose a forfeiture of \$50 per unit. For the next 1500 such units, we propose a forfeiture of \$75 per unit. We set forth below the precise tiers and per-unit penalties we will apply in this and other DTV tuner requirement cases:

0-1000 units: \$50 per unit
1001-2500 units: \$75 per unit
2501-5000 units: \$100 per unit
5001-10,000 units: \$125 per unit
10,001-20,000 units: \$150 per unit
20,001-30,000 units: \$175 per unit
30,001-40,000 units: \$200 per unit
40,001-50,000 units: \$225 per unit
50,001+ units: \$250 per unit

Application of this tiered, per unit approach clearly demonstrates the gravity with which we view this violation and our desire that the proposed forfeitures have a strong deterrent effect. We may revisit and change our approach if this forfeiture calculation methodology does not adequately deter future violations or as other circumstances require.⁴⁰ Additionally, consistent with the Act and precedent,⁴¹ we may impose more severe sanctions and/or utilize different forfeiture calculation methodologies against companies that have a history of non-compliance with the DTV tuner requirements.

16. Based on the record in this case, Syntax-Brilliant's violations merit a large proposed forfeiture. The regulatory deadlines at issue have been in place for some time – importers have known about the DTV tuner requirement since 2002. Some of Syntax-Brilliant's violations involved large-size screen television receivers, for which the deadline was July 1, 2005. Syntax-Brilliant, however, continued to ship interstate large-size screen receivers that do not comply with the DTV tuner requirement until October 16, 2006, more than fourteen months after the July 1, 2005 deadline. And while the majority of importations and interstate shipments of non-compliant mid-size DTV receivers occurred between March 1, 2006 and June 1, 2006, Syntax-Brilliant continued to import and ship interstate non-compliant DTV mid-size screen receivers until the end of October 2006, approximately eight months after the deadline.

17. We also find that a substantial proposed forfeiture is warranted given the large number of non-DTV compliant receivers imported and shipped interstate -- more than 22,000 -- and the substantial

⁴⁰ See *Globcom*, 21 FCC Rcd at 4723-24 ¶¶ 35-38 (finding that the Commission had authority to change its forfeiture calculation methodology for carriers' failure to meet their universal service contribution obligations; Commission found that previous forfeiture calculation approach did not sufficiently deter violations). As noted above, we have authority to propose forfeitures of up to \$11,000 per violation against any entity that is not a common carrier, broadcast licensee or cable operator. For continuing violations, we may propose forfeitures of \$11,000 per day, up to a maximum of \$97,500 per violation.

⁴¹ See 47 U.S.C. § 503(b)(2)(E) (listing "history of prior offenses" as a factor in forfeiture calculation). See also *Ramko Distributors, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 07-49 at ¶ 23 (rel. March 30, 2007); *AT&T Wireless Services*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 7891, 7896 ¶ 20 (2002), *forfeiture ordered*, Forfeiture Order, 17 FCC Rcd 21866, 21874-75 ¶ 25 (2002).

number of shipments and importations made by Syntax-Brilliant -- a total of 351 importations and interstate shipments.

18. Finally, we consider Syntax-Brilliant's high revenues and ability to pay a forfeiture in determining the appropriate forfeiture amount. The Commission made clear in the *Forfeiture Policy Statement* that companies with higher revenues, such as Syntax-Brilliant,⁴² could expect forfeitures higher than those reflected in the base amounts.⁴³

19. We do not believe that Syntax-Brilliant, as a newly merged entity and a small business, was unduly burdened by the Commission's decision to advance the deadline for mid-size screen television receivers. Prior to the merger, Syntax Groups Corporation and Brilliant Corporation were both involved in the manufacture and distribution of television receiving equipment.⁴⁴ Thus, the two companies that formed the merged entity had notice of the original and advanced DTV tuner deadlines and, more importantly, had sufficient lead time to develop new product lines to comply with the deadlines. Further, while Syntax-Brilliant asserts that most of its non-DTV-compliant receivers were imported and shipped interstate in the first month following the March 1, 2006 deadline, the record indicates that it continued to import and ship interstate non-DTV-compliant television receivers until the end of October 2006 -- approximately eight months after the March 1, 2006 deadline. We also find that the company's labeling of its non-DTV-compliant television receivers as "HD ready" is not a mitigating factor. Most consumers are likely unaware that this means that the equipment will not be able to receive over-the-air television signals after February 17, 2009.⁴⁵ In fact, many consumers believe that this signifies that the equipment *will* be able to receive over-the-air television signals after the digital transition.

⁴² According to a recent company press release, Syntax-Brilliant had revenues of \$492.4 million for the nine months ending March 31, 2007. See News Release, Syntax-Brilliant Corporation Reports Third Quarter Financial Results (May 10, 2007), at <http://phx.corporate-ir.net/phoenix.zhtml?c=146224&p=irol-newsArticle&ID=998957&highlight=> (visited May 16, 2007).

⁴³ Specifically, the Commission stated:

[O]n the other end of the spectrum of potential violations, we recognize that for large or highly profitable communication entities, the base forfeiture amounts ... are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts ..., we intend to take into account the subsequent violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.

Forfeiture Policy Statement, 12 FCC Rcd at 17099-100. See also *SBC Communications v. FCC*, 373 F.3d 140, 143 (D.C. Cir. 2004) ("a company's ability to pay is a statutory factor that the FCC may consider, and it is reasonable to expect that a larger fine might be necessary to deter a large company").

⁴⁴ According to Syntax-Brilliant's website, the Syntax Groups Corporation was founded in May 2003 and the Brilliant Corporation was founded in 1997. See <http://www.syntaxbrilliant.com/company/history.html>.

⁴⁵ See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, Second Report and Order, FCC 07-69 at ¶¶ 4-5 (rel. May 3, 2007) (citing studies demonstrating that many consumers are unaware that, after the digital transition, analog-only devices will be unable to continue receiving over-the-air broadcast television without use of an external digital tuner or converter).

20. Syntax-Brilliant imported or shipped 22,069 non-compliant DTV tuners within the statute of limitations. Applying the forfeiture calculation methodology outlined above results in a proposed forfeiture of \$2,899,575 for Syntax-Brilliant's willful and repeated importation and interstate shipment of television receivers that do not comply with the DTV tuner requirement in violation of Section 15.117(i)(1)(i) and (ii) of the Rules.⁴⁶ We believe that the proposed forfeiture reflects the gravity of Syntax-Brilliant's apparent violations, the company's ability to pay, and the need to deter Syntax-Brilliant and other companies from future violations of the Act and the Rules.

III. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Syntax-Brilliant Corporation is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two million eight hundred ninety-nine thousand five hundred seventy-five dollars (\$2,899,575) for willful and repeated violations of Section 15.117(i)(1)(i) and (ii) of the Rules.

22. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Syntax-Brilliant Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

23. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

24. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

25. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

26. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁴⁷

⁴⁶ We derived this amount as follows: (1000 units * \$50/unit) + (1500 units * \$75/unit) + (2500 units * \$100/unit) + (5000 units * \$125/unit) + (10,000 units * \$150/unit) + (2,069 units * \$175/unit) = \$2,899,575.

⁴⁷ See 47 C.F.R. § 1.1914.

27. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Mr. Vincent F. Sollitto, Chairman and CEO, Syntax-Brilliant Corporation, 1600 N. Desert Drive. Tempe, AZ, 85281 and Andrew M. Beato, Esq., Stein, Mitchell & Mezines, L.L.P., 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *In the Matter of Regent U.S.A., Inc., Notice of Apparent Liability for Forfeiture, EB-06-SE-320*

Re: *In the Matter of Syntax-Brilliant Corporation, Notice of Apparent Liability for Forfeiture, EB-07-SE-023*

I strongly support these two *Notices of Apparent Liability for Forfeiture*. It is my hope that the forfeitures proposed today, as well as the notice of our tiered, per unit forfeiture scale, will serve as a deterrent to future potential violators. We need to send a message that the FCC takes this matter seriously and will strongly enforce our rules.

When the Commission adopted the DTV tuner compliance deadlines in June and November 2005, we did so in consultation with the consumer electronics industry, attempting to limit any undue impact on production cycles and shipping schedules. We promulgated rules to protect consumers, ease the burden on manufacturers and retailers, and foster a smooth transition to digital broadcasting. That is why today I am appalled at the actions of Regent U.S.A. and Syntax-Brilliant for their willful and repeated violations of Commission rules. The American people deserve better than to be sold non-DTV-compliant television receivers.

Today's action demonstrates that, while the Commission will punish violators *after* unsuspecting customers have been harmed, our enforcement tools are a poor and inadequate substitute for proactive consumer outreach and education. We have not done nearly enough to inform the public of the differences between, for example, HD-ready, DTV, or even HD-TV. We owe it to our citizens, those that will be harmed by buying a television set that cannot receive digital signals, to help them make the right purchases. If more citizens had known the differences, and had been aware that the televisions in question did not have the capabilities they needed, perhaps they would not have purchased the sets. We simply cannot fix the problem on the back end. We need to address the problem head on. Education and outreach are key to solving this problem.